UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Paul Marsico, Plaintiff, v. Mercantile Adjustment Bureau, Inc. Defendant.	Civil Action No.: 14-cv-00951-SJF-GRB

MERCANTILE ADJUSTMENT BUREAU, LLC'S
ANSWER TO COMPLAINT

NOW COMES Defendant Mercantile Adjustment Bureau, LLC, improperly pled as Mercantile Adjustment Bureau, Inc., and hereinafter referred to as ("MAB"), through counsel and pursuant to the Federal Rules of Civil Procedure, hereby submits this Answer and Affirmative Defenses to the Complaint filed by plaintiff, Paul Marsico ("Plaintiff"), and states:

I. INTRODUCTION

1. MAB admits that plaintiff purports to bring an action for damages under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* ("FDCPA"), but denies any and all damages, liability, and/or violations, to the extent alleged in ¶ 1. With respect to the balance of the allegations, MAB admits only that it left for plaintiff voicemail messages but denies that it violated the FDCPA.

2. MAB admits that plaintiff purports to bring an action for damages under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* ("FDCPA"), but denies any and all damages, liability, and/or violations to the extent alleged in allegations in ¶ 2.

3. The statute referenced in ¶ 3 speaks for itself and is the best evidence of its content. To the extent the allegations in ¶ 3 state otherwise, they are denied.

II. JURISDICTION AND VENUE

4. MAB admits the allegations in ¶ 4 for jurisdiction purposes only.

III. PARTIES

5. MAB denies the allegations in ¶ 5 for lack of knowledge or information sufficient to form a belief therein, which has the effect of a denial.

6. MAB admits only that as part of its business it provides debt collection services to third-party clients and uses the mail and telephone to do so. Except as specifically admitted, MAB denies the allegations in ¶ 6.

7. MAB admits only that when it operates as a debt collector as defied by 15 U.S.C. § 1692(a)(6), that certain of its activities may be regulated by the FDCPA. Except as specifically admitted, the allegations in ¶ 7 are denied.

IV. PARTIES

8. MAB repeats its answers to the allegations set forth in the preceding ¶¶ 1-7 as if same were set forth herein at length.

9. MAB admits only that it was retained to collect from plaintiff an amount due and owing and denies the balance of the allegations as calling for a legal conclusion.

10. MAB admits only that it was retained to collect from plaintiff an amount due and owing and denies the balance of the allegations.

11. MAB admits only that when it operates as a debt collector as defined by 15 U.S.C. § 1692(a)(6), that certain activities may be regulated by the FDCPA and that it

uses certain software to place telephone calls to consumers. Except as specifically admitted, MAB denies the allegations in ¶ 11.

12. MAB denies that it was aware of the ongoings in plaintiff's residence and admits that it has been sued for alleged violations of the FDCPA. Except as specifically admitted, the allegations in ¶ 12 are denied.

13. MAB denies the allegations in ¶ 13.

14. MAB admits only that it used its telephone software to place a telephone calls to and leave messages for plaintiff. Except as specifically admitted, the allegations in ¶ 14 are denied.

15. MAB admits only that its records reflect that it left voicemail messages for plaintiff. Except as specifically admitted, the allegations in ¶ 15 are denied.

16. MAB admits only that it left for plaintiff voicemail messages and that the messages speak for themselves and are the best evidence of their content. To the extent the allegations in ¶ 16 state otherwise, they are denied.

17. MAB denies the allegations in ¶ 17 for lack of knowledge or information sufficient to form a belief therein, which has the effect of a denial.

18. MAB denies the allegations in ¶ 18.

19. MAB denies the allegations in ¶ 19.

20. MAB denies the allegations in ¶ 20.

21. MAB had no knowledge of the ongoings in plaintiff's residence and denies that it was obligated to undertake any action relative to plaintiff's residence prior to calling plaintiff.

22. MAB denies that it disclosed plaintiff's alleged debt to any person and thus denies the allegations in ¶ 22.

23. MAB denies that it required consent to leave messages for plaintiff and thus denies the balance of the allegations in ¶ 23.

24. MAB admits only that as part of its business it leaves voicemail messages for consumers and denies the balance of the allegations in ¶ 24.

25. MAB admits that it has been the subject of lawsuits in the past relative to alleged violations of the FDCPA. Except as specifically admitted, the allegations in ¶ 25 are denied.

V. CAUSE OF ACTION UNDER THE FAIR DEBT COLLECTION PRACTICES ACT

26. MAB repeats its answers to the allegations set forth in the preceding ¶¶ 8-25 as if same were set forth herein at length.

27. MAB denies the allegations in ¶ 27.

28. MAB denies that plaintiff is entitled to the relief sought in the final paragraph of his complaint, which begins "WHEREFORE."

AND NOW, in further Answer to the plaintiffs' Complaint, Defendant MAB avers as follows:

FIRST AFFIRMATIVE DEFENSE

One or more of the counts/grounds in plaintiff's Complaint fails to state a claim against MAB upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Pursuant to 15 U.S.C. § 1692k(c), to the extent a violation(s) is established, any such violation(s) was not intentional and resulted from a *bona fide* error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

THIRD AFFIRMATIVE DEFENSE

Any harm suffered by plaintiff was legally and proximately caused by persons, individuals, corporations, or entities beyond the control or supervision of MAB, or for whom MAB is not responsible or liable.

FOURTH AFFIRMATIVE DEFENSE

Assuming that plaintiff suffered any damages, plaintiff has failed to mitigate his damages or take other reasonable steps to avoid or reduce his damages.

WHEREFORE, Defendant Mercantile Adjustment Bureau, LLC, respectfully requests this Answer be deemed good and sufficient, plaintiff's lawsuit be dismissed with prejudice at plaintiff's costs pursuant to Federal and State law, plaintiff be ordered to pay reasonable attorney's fees and costs for MAB, and for all other general and equitable relief.

Dated: March 11, 2014

Respectfully submitted,

s/ Aaron R. Easley
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CERTIFICATE OF SERVICE

I certify that on this 11th day of March, 2014, a copy of **Mercantile Adjustment Bureau, LLC's Answer to Complaint** was filed electronically in the ECF system. Notice of this filing will be sent to the parties of record by operation of the Court's electronic filing system, including plaintiff's counsel as described below. Parties may access this filing through the Court's system.

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